

117TH CONGRESS
2D SESSION

H. R. 9241

To provide for the transfer of export control authorities from the Department of Commerce to the Department of Defense, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2022

Mr. BANKS (for himself, Mr. WITTMAN, and Mr. STEUBE) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Armed Services, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the transfer of export control authorities from the Department of Commerce to the Department of Defense, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prioritizing National
5 Security in Export Controls Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) In 2018 Congress on an overwhelming bi-
2 partisan basis passed the Export Control Reform
3 Act of 2018 requiring the Department of Commerce
4 to tighten restrictions on transfers of emerging and
5 foundational technologies to high risk countries, es-
6 pecially China, but there has been little progress
7 ever since.

8 (2) The Department of Commerce has shown
9 itself inept to reconcile its mission to protect United
10 States national security with its objective of pro-
11 moting United States exports to high-risk countries,
12 especially China.

13 (3) By August 2022, a Department of Com-
14 merce-led process that reviews United States tech-
15 nology exports to China has approved almost all re-
16 quests and has overseen an increase in sales of some
17 particularly important technologies.

18 (4) There are only 70 Chinese entities on the
19 Department of Commerce's current entity list, de-
20 spite that tens of thousands of Chinese entities may
21 meet the United States criteria for military end-user
22 export restrictions.

23 (5) The Bureau of Industry and Security, re-
24 sponsible for enforcing export control under the De-
25 partment of Commerce, has not taken a single ac-

1 tion since the passing of the Export Control Reform
2 Act of 2018 to restrict foundational technology from
3 being transferred to China.

4 (6) In May 2022, the Bureau of Industry and
5 Security dropped foundational technology as a cri-
6 terion, culminating its defiance of Congress.

7 **SEC. 3. SENSE OF CONGRESS.**

8 It is the sense of Congress that export control author-
9 ity should be taken away from the Bureau of Industry and
10 Security of the Department of Commerce since the Bu-
11 reau has manifestly been unable to resolve the conflict of
12 interest between promoting trade and protecting United
13 States national security through enforcing restrictions on
14 technology transfer to high-risk countries, especially
15 China.

16 **SEC. 4. TRANSFER OF EXPORT CONTROL AUTHORITIES**
17 **FROM THE DEPARTMENT OF COMMERCE TO**
18 **THE DEPARTMENT OF DEFENSE.**

19 (a) TRANSFER OF EXPORT CONTROL AUTHORI-
20 TIES.—

21 (1) IN GENERAL.—Notwithstanding any provi-
22 sion of the Export Control Reform Act of 2018 or
23 any other provision of law, all authorities provided
24 to the Department of Commerce, including the Bu-
25 reau of Industry and Security, regarding implemen-

1 tation and enforcement of matters relating to export
2 control shall be transferred to and carried out by the
3 Defense Technology and Security Administration of
4 the Department of Defense.

5 (2) IMPLEMENTATION.—The Secretary of Com-
6 merce and the Secretary of Defense shall take such
7 actions, including the promulgation of regulations,
8 as may be necessary to implement or otherwise carry
9 out this subsection.

10 (b) TRANSFER OF AMOUNTS.—Twenty percent of the
11 unobligated balances, as of the date of the enactment of
12 this Act, of amounts made available for “DEPARTMENT OF
13 COMMERCE—BUREAU OF INDUSTRY AND SECURITY—OP-
14 ERATIONS AND ADMINISTRATION” account for fiscal year
15 2022 shall be transferred to and merged with amounts
16 otherwise made available to the Defense Technology and
17 Security Administration for such fiscal year to carry out
18 subsection (a).

19 (c) PROHIBITION ON TRANSFER OF CERTAIN SENIOR
20 EXECUTIVE SERVICE POSITIONS.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, beginning on the date of the enact-
23 ment of this Act, no individual employed in a Senior
24 Executive Service position related to export control
25 in Department of Commerce, including the Bureau

1 of Industry and Security, may be permitted to trans-
2 fer from such position to a position in the Defense
3 Technology and Security Administration of the De-
4 partment of Defense.

5 (2) SENIOR EXECUTIVE SERVICE POSITION DE-
6 FINED.—In this subsection, the term “Senior Execu-
7 tive Service position” has the meaning given that
8 term in section 3132(a)(2) of title 5, United States
9 Code.

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